

In a new Final Office Action mailed October 16, 2006, claims 1-9, 14, and 15 are again rejected under 35 U.S.C. 102(e) as being anticipated by Song.

THE EXAMINER HAS INTRODUCED A NEW GROUND FOR REJECTION

As noted in at least MPEP 706.07(a), under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

In a non-Final Office Action dated May 5, 2006, claims 1-9, 14, and 15 were rejected under 35 U.S.C. 103(a) as being obvious over Song in view of Japanese Application 2002-324738. In the current Final Office Action mailed October 16, 2006, claims 1-9, 14, and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Song.

Applicants did not amend the claims in response to the non-Final Office Action dated May 5, 2006, nor was the Final Office Action mailed October 16, 2006 based on information submitted by the Applicants in an IDS.

Accordingly, because the Examiner has introduced a new ground for rejection that is neither necessitated by Applicants' amendment of the claims nor based on information submitted in an IDS, Applicants respectfully request withdrawal of the finality of the Office Action.

EXAMINER NOT RESPONDING TO PREVIOUS ARGUMENT

As noted in at least MPEP 706.07, before a Final Action is proper, a clear issue should be reached between the Examiner and the applicant. As noted in at least MPEP 706.07(f), the Examiner is required to answer and address all traversals. This requirement is in addition to any repetition of a previously held position and is required to allow the applicant a chance to review the Examiner's position as to these arguments and to clarify the record for appeal.

Additionally and as further noted in MPEP 706.07(f), a failure of the Examiner to address the applicant's traversals can be deemed a failure to rebut these arguments so as to admit that the arguments have overcome the rejection. At the very least, the failure to address the applicant's traversals would render the Examiner's decision to again reject the claims arbitrary and capricious and invalid under the Administrative Procedures Act, 5 U.S.C. § 706, the standard under which such rejections are reviewed in view of *Dickinson v. Zurko*, 527 U.S. 150, 50 USPQ2d 1930 (1999).

In particular, the Examiner, by withdrawing the 102(a,e) rejection over Song issued in a Final Office Action mailed November 10, 2005, in favor of the a 103(a) rejection over Song in view of Japanese Application 2002-324738 in the May 5, 2006 Office Action, has admitted that the 102(a,e) rejection is not supportable. However, in reasserting the 102(e) rejection over the Song reference, the Examiner has not explained why the Song reference is now asserted to teach "diagnosing an operational state of the plurality of sub-modules prior to beginning the semiconductor device manufacturing process" when the Examiner has acknowledged that it fails do so, and has used Japanese Application 2002-324738 to allegedly teach such (see the 5/5/06 Action, page 5).

As such, since the Examiner has not addressed the Applicants' traversal presented in the Amendment/RCE filed on February 10, 2006, or in the response filed August 2, 2006, no clear issue has been reached. Accordingly, Applicants request the Examiner withdraw the Final Office Action and issue a new non-Final Office Action addressing the arguments.

CONCLUSION

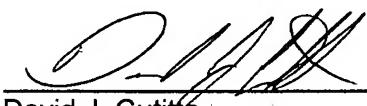
As the outstanding Office Action has introduced a new ground for rejection and has failed to respond to Applicants' previous arguments, Applicants respectfully submit that the outstanding Office Action is improper. In addition to the withdrawal of finality, applicants further request a new non-final Office Action.

Accordingly, if there are any further formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

Respectfully submitted,

STAAS & HALSEY LLP

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By: 

David J. Cutitta
Registration No. 52, 790

1201 New York Ave, N.W., Suite 700
Washington, D.C. 20005
Telephone: (202) 434-1500
Facsimile: (202) 434-1501